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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,773	07/12/2006	T. Kjetil Froyland	1935-00183	7854
26753 7590 05/11/2010 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER				
WILLIAMS, MONICA L				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
05/11/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/585,773

**Applicant(s)**

FROYLAND, T. KJETIL

**Examiner**

MONICA WILLIAMS

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-17 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14, 15, 17, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/14/2010 has been entered.

### ***Election/Restrictions***

2. Claims 13 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species II or III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/06/2009.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-12, 14-15, 17, and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halaunbrenner (3,824,957) in view of Wishner (4,007,709).

5. In re claim 27, with reference to col.3 lines 1-16 and Figures 4, 5, and 7, Halaunbrenner discloses apparatus comprising: a rearing device (10'); an emigration

device (10) engaging with the rearing device (10') between a sea bed and the rearing device (10'); an elongated conduit member (7) extending through the rearing device to the emigration device, wherein the emigration device defines a second cut-out (6) at a location that allows for crustacea to migrate from the conduit onto the sea bed. Not disclosed is a first cut-out formed in the conduit.

6. However, with reference to Figures 2 and 6 and col.2 lines 59-67, Wishner discloses an apparatus comprising a rearing device (10), an emigration device (10), an elongated conduit member (14) extending through the rearing device to the emigration device, wherein a first cut-out (17a) is formed radially into the conduit member at a location that allows for migration of crustacea radially inwardly from the rearing device into the conduit. The advantage of this is for better water and air flow (col. 3 lines 19-23). Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the conduit of Halaunbrenner with the cut-outs as taught by Wishner in order to have better water and air flow.

7. In re claim 10, with reference to col.3 lines 51-54 and Figure 4, Halaunbrenner discloses wherein the emigration device comprises at least one side support element (12) being independent of the rearing device (10') and projecting from a top portion of the base and extending essentially parallel to at least a portion of the elongated conduit member of the rearing device.

8. In re claim 11, with reference to col.3 lines 51-54, Halaunbrenner discloses wherein the at least one side support element (15) is formed by a rod element (hollow cylinder).

9. In re claim 12, with reference to col.3 lines 19-22, Halaunbrenner discloses wherein the at least one side support element (12) is formed by an element forming a wall (corner flanges) of the rearing device.
10. In re claim 14, with reference to col.4 lines 4-17 Halaunbrenner discloses wherein the emigration device comprises a mounting element (15) fixed to the base for the securing of the rearing device to the emigration device.
11. In re claim 15, with reference to col.4 lines 4-17 Halaunbrenner discloses wherein the mounting element (15) is arranged to extend up through a portion of the conduit member (7), and comprising a clamping device (22) which is adjustably connected to the mounting body, being arranged to exert a force against a portion of the rearing device.
12. In re claim 17, with reference to col.34 lines 6-9 Halaunbrenner discloses wherein outlet openings (areas between 9 and 10, Fig.7) of the emigration device are provided with a protective device (8) providing protection for the crustacea juveniles as they leave the emigration device.
13. In re claim 28, with reference to Figure 7, Halaunbrenner discloses the elongated conduit member (7) centrally extends through the rearing device.

***Allowable Subject Matter***

14. Claims 19-26 are allowed.

***Response to Arguments***

15. Applicant's arguments filed 04/14/2010 have been fully considered but they are not persuasive.

16. In response to applicant's arguments that Halaunbrenner does not disclose a second cut-out, this argument is not persuasive because as shown in Figure 5 when two trays are stacked on each other the emigration device is shown at (10) and the rearing device is shown at (10') both of these contain cut-outs (6 and 6' respectively).

17. In response to applicant's arguments that Halaunbrenner does not disclose a cut-out formed radially into the conduit member, this argument is persuasive. The Examiner uses the Wishner reference as a teaching for making openings in the conduit member as described in the above rejection of Claim 27.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA WILLIAMS whose telephone number is (571)270-3113. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/  
Supervisory Patent Examiner, Art  
Unit 3644

MW 05/03/2010